



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/706,508	11/03/2000	Michael Schwartz	JUR-PT001	6522

3624 7590 03/25/2004

VOLPE AND KOENIG, P.C.
UNITED PLAZA, SUITE 1600
30 SOUTH 17TH STREET
PHILADELPHIA, PA 19103

EXAMINER

TRAN, TUAN A

ART UNIT	PAPER NUMBER
----------	--------------

2682

DATE MAILED: 03/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/706,508

Applicant(s)

SCHWARTZ ET AL. ✓

Examiner

Tuan A Tran

Art Unit

2682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 and 38-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 and 38-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1, 4-7, 10-11, 14, 17, 21-24 and 26-28 are rejected under 35

U.S.C. 102(e) as being anticipated by Avnet et al. (2002/0094787).

Regarding claims 17 and 21-24, Avnet discloses a portable (hand held) communication device 16 associated with a predetermined broadcast of a predetermined information delivery system 18 wherein the predetermined broadcast is in digital format (See fig. 1 and Abstract, page 1 [0006-0009], page 2 [0015], page 3 [0023], [0025]), the device inherently comprising: a digital receiver for receiving the predetermined broadcast, wherein the receiver is fixedly set to receive the predetermined broadcast (See fig. 1 and page 3 [0023], [0024], [0028]); and a speaker for producing audio signals of the received predetermined broadcast (See fig. 1 and page 2 [0014], [0018]).

Claim 11 is rejected for the same reasons as set forth in claim 17.

Art Unit: 2682

Claims 1 and 4 are rejected for the same reasons as set forth in claim 17, as method.

Regarding claims 26-28, Avnet discloses as cited in claim 17. Avnet further discloses a portable (hand held) communication device 16 associated with a predetermined broadcast of a predetermined information delivery system 18 wherein the predetermined broadcast is in digital format (See fig. 1 and Abstract, page 2 [0015], page 3 [0023], [0025]) such as PDA, cell phone, computer or other specialized receiving device which is capable of downloading the information from and otherwise interacting with the information delivery system, the device inherently comprising On/Off button, volume control button and rechargeable battery.

Claim 14 is rejected for the same reasons as set forth in claim 28.

Regarding claim 5, Avnet discloses as cited in claim 1. Avnet further discloses the step of preventing an individual being distributed the communication device from resetting the communication device to another broadcast (See page 3 [0028]).

Regarding claims 6-7, Avnet discloses as cited in claim 1. Avnet further discloses the predetermined broadcast is associated with an event and the communication devices are distributed along with tickets of the event and upon entry to the event (See fig. 3 and page 3, [0027], [0028]).

Regarding claim 10, Avnet discloses as cited in claim 1. Avnet further discloses the steps of: each portable communication device transmitting a use signal when operating; and receiving the use signals for the operating communication devices to determine a number of the operating units (See page 2 [0012]).

Art Unit: 2682

2. Claims 38 and 40 is rejected under 35 U.S.C. 102(e) as being anticipated by Hahn et al. (6,230,029).

Regarding claim 38, Hahn discloses a communication device (See fig. 3) comprising: a speaker 24 configured to direct sounds towards an ear canal of a listener's ear; and a housing 10 fixedly connected to the speaker, the housing configured to be substantially supported by a pinna of the listener's ear and containing substantially all other components of the communication device other than the speaker (See figs. 3, 10 and col. 5 line 43 to col. 6 line 17).

Regarding claim 40, Hahn discloses as cited in claim 38. Hahn further discloses the all other components comprises a tuned frequency of the tuner 30 is adjustable by a listener and inherently a variable frequency tuner (See fig. 10).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2-3, 8-9, 12, 18-20 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Avnet et al. (2002/0094787).

Regarding claims 18-19, Avnet discloses as cited in claim 17. However, Avnet does not mention that the device comprises indicia of the predetermined broadcast or

Art Unit: 2682

an advertiser/sponsor of the predetermined broadcast. Displaying indicia of the predetermined broadcast or an advertiser/sponsor of the predetermined broadcast on the device is a well known graphical presentation technique such as all Disney TV broadcast programs or products having Disney logo or handheld/car radios displaying radio station channel: FM 107.3, FM 104.1, AM 1500 ... etc. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included indicia of the predetermined broadcast or an advertiser/sponsor of the predetermined broadcast on the device for the advantage of allowing the advertiser/sponsor to sell their names to the customers for commercial purposes.

Claim 12 is rejected for the same reasons as set forth in claim 18-19.

Claims 3 and 8-9 are rejected for the same reasons as set forth in claim 18-19, as method.

Regarding claims 20 and 25, Avnet discloses as cited in claim 17. Avnet further discloses the broadcast has an associated broadcast time period (See page 3 [0025]). However, Avnet does not mention that the device comprises timer switch for preventing operation of the communication device during time periods other than the associated broadcast time period. Because the broadcast has an associated broadcast time period, therefore it is a common sense for person skilled in the art to add the timer switch to the device to operate the device only during the broadcast time period in order to prolong battery life to save cost and time because battery power is a limited power resource.

Art Unit: 2682

Claim 2 is rejected for the same reasons as set forth in claims 20 and 25, as method.

4. Claims 13, 15-16 and 38-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Avnet et al. (2002/0094787) in view of Hahn et al. (6,230,029).

Regarding claims 38-39, Avnet discloses a portable (hand held) communication device 16 associated with a predetermined broadcast of a predetermined information delivery system 18 wherein the predetermined broadcast is in digital format (See fig. 1 and Abstract, page 2 [0015], page 3 [0023], [0025]), the device inherently comprising: a digital receiver for receiving the predetermined broadcast, wherein the receiver is fixedly set to receive the predetermined broadcast (See fig. 1 and page 3 [0023], [0024], [0028]); and a speaker for producing audio signals of the received predetermined broadcast (See fig. 1 and page 2 [0014], [0018]). However, Avnet does not mention that the communication device 16 is a wireless transceiver headset comprising a speaker configured to direct sounds towards an ear canal of a listener's ear; and a housing fixedly connected to the speaker, the housing configured to be substantially supported by a pinna of the listener's ear and containing substantially all other components of the communication device other than the speaker. Hahn discloses a wireless transceiver headset comprising: a speaker 24 configured to direct sounds towards an ear canal of a listener's ear; and a housing 10 fixedly connected to the speaker, the housing configured to be substantially supported by a pinna of the listener's ear and containing substantially all other components of the communication

Art Unit: 2682

device other than the speaker (See figs. 3, 10 and col. 5 line 43 to col. 6 line 17). Since both Avnet and Hahn teach about wireless communication device (wireless transceiver), therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace a hand held wireless communication device with a wearable wireless communication device for the advantage of giving the user higher degree of freedom (hand free).

Regarding claim 40, Avnet & Hahn discloses as cited in claims 38-39. Hahn further discloses the all other components comprises a tuned frequency of the tuner 30 is adjustable by a listener and inherently a variable frequency tuner (See fig. 10).

Claims 13 and 15-16 are rejected for the same reasons as set forth in claim 40.

Regarding claim 41, Avnet & Hahn discloses as cited in claims 38-39. Avnet further discloses the all other components comprises a memory storing a recording associated with the predetermined broadcast (See page 2 [0014] and page 3 [0024]).

Regarding claims 42-44, Avnet & Hahn discloses as cited in claims 38-39. However, they do not mention that the device comprises indicia of the predetermined broadcast or an advertiser/sponsor of the predetermined broadcast. Displaying indicia of the predetermined broadcast or an advertiser/sponsor of the predetermined broadcast on the device is a well known graphical presentation technique such as all Disney TV broadcast programs or products having Disney logo or handheld/car radios displaying radio station channel: FM 107.3, FM 104.1, AM 1500 ... etc. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included indicia of the predetermined broadcast or an advertiser/sponsor

Art Unit: 2682

of the predetermined broadcast on the device for the advantage of allowing the advertiser/sponsor to sell their names to the customers for commercial purposes.

Regarding claims 45-48, Avnet & Hahn discloses as cited in claims 38-39. Avnet further discloses the communication device is a digital recording player inherently comprising: a digital audio processor, a memory (ROM and RAM) and an input for receiving, storing and producing an audio signal of a digital recording (See page 2 and page 3 [0023-0024]).

Regarding claim 49, Avnet & Hahn discloses as cited in claims 45. Avnet further discloses an indicia is associated with the digital recording (See page 1 [0008]).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Conway et al. (5,214,793) discloses electronic billboard and vehicle traffic control communication system.
- Slotznick (2001/00559510 discloses telephone device with enhanced audio-visual features for interacting with nearby displays and display screens.
- Han et al. (2003/0171096) discloses system and methods for distributing information through broadcast media.

Art Unit: 2682

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Tuan Tran** whose telephone number is **(703) 605-4255**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Vivian Chin**, can be reached at **(703) 308-6739**.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

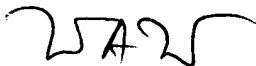
Washington, D.C. 20231

or faxed to:

(703) 872-9314 (for Technology Center 2600 only)


Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.



Tuan Tran

AU 2682



LEE NGUYEN
PRIMARY EXAMINER

Application/Control Number: 09/706,508

Art Unit: 2682

Page 10